

FILED '09 OCT 09 11:57 USDC-ORE

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

EDWARD BERNABE; MONICA
MARTINEZ; RUTH MARTINEZ; and
GINA OTT;

Case No. 09-6279-TC

Plaintiffs,

COMPLAINT

v.

JURY REQUESTED

DERRICK E. MC GAVIC dba THE
LAW OFFICE OF DERRICK E.
MC GAVIC; SARAH E. FUDGE;
KRISTAN K. FINNEY; LVNV
FUNDING, LLC.; VALLEY PROCESS
SERVICES, INC. dba VALLEY
PROCESS SERVICES, LLC.; JASON
WILLIAMS; and JOHN DOE

Defendants

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. §1692k(d) for plaintiffs' FDCPA claims; this Court has jurisdiction over plaintiffs' state law

COMPLAINT

Page 1

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claims pursuant to 28 U.S.C. § 1367.

2. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") and state law.

3. Venue is proper in this District because the acts and transactions occurred here.

PARTIES

4. Plaintiff Edward Bernabe (hereinafter "Bernabe") is a natural person who resides in the City of Junction City, State of Oregon, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

5. Plaintiff Monica Martinez (hereinafter "M. Martinez") is a natural person who resides in the City of Junction City, State of Oregon, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

6. Plaintiff Ruth Martinez (hereinafter "R. Martinez") is a natural person who resides in the City of South San Francisco, State of California, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

7. Plaintiff Gina Ott (hereinafter "Ott") is a natural person who resides in the City of Stevenson Ranch, State of California, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant Derrick Mc Gavic dba Law Offices of Derrick E. Mc Gavic, Defendant Sarah E. Fudge, Kristan K. Finney, (collectively referred to as "Mc Gavic defendants") are attorneys operating from an address of 1666 W 12th Ave., Eugene, OR 97440 and are each a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

9. Defendant LVNV Funding, LLC (hereinafter "LVNV") is not licenced to conduct

business in the state of Oregon and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

10. Defendant Valley Process Services, Inc. dba Valley Process Services, LLC (hereinafter “Valley Process Services”) is a process service company operating from an address of 4978 Morely Loop, Eugene, OR 97402.

11. Defendant Jason Williams (hereinafter “Williams”) is a process server employed by Valley Process Services operating from an address of 4978 Morely Loop, Eugene, OR 97402.

12. Defendant John Doe performed a skip trace of Defendant Monica Martinez.

FACTUAL ALLEGATIONS

13. Derrick McGavic on behalf of Defendant LVNV filed suit against Plaintiff M. Martinez in the Lane County Circuit Court.

14. Defendants attempted service on Plaintiff M. Martinez at the address of 24382 High Pass Road, Junction City, OR 97448.

15. Defendants service attempts were unsuccessful.

16. Defendant Derrick McGavic, Valley Process Services, and Williams falsely claimed Plaintiff M. Martinez was avoiding service. See Exhibit A.

17. Defendant Derrick McGavic filed an affidavit with the Lane County Circuit Court that he had carefully verified that Ms. Martinez was the owner of 24382 High Pass Road with the Lane County Tax Assessor. Defendant Derrick McGavic’s affidavit further stated that he had verified with the Oregon Department of Motor Vehicles that Ms. Martinez lived at 24382 High Pass Rd. Mc Gavic’s affidavit further stated that John Doe had performed a skip trace and also independently told Derrick McGavic that the Lane County Tax Assessor and the Oregon DMV

indicated that Ms. Martinez lived at 24382 High Pass Road. See Exhibit B.

18. Defendant Derrick McGavic's affidavit was false.

19. Ms. Martinez has not lived at 24382 High Pass Road at any time in the past.

20. Neither Lane County nor the Oregon DMV have record of Ms. Martinez living at 24382 High Pass Rd. Exhibit C

21. Plaintiff Edward Bernarbe is the sole owner of 24382 High Pass Rd.

22. Defendants LVNV and the McGavic defendants obtained a default judgment against Ms. Martinez based on Derrick McGavic's false affidavits and the false representations of Valley Process and Williams.

23. Defendant Sarah E. Fudge issued a writ of garnishment against Plaintiff M. Martinez after obtaining the default judgment.

24. Plaintiff M. Martinez did not receive notice of the lawsuit until Defendant McGavic garnished her bank account, and bank accounts and safe deposit box, of her mother, Plaintiff R. Martinez and friend, Plaintiff Ott. Plaintiff M. Martinez was listed on these accounts as a signor and for emergency purposes only.

25. Defendants filed a false affidavit claiming that M. Martinez was served when they moved for a default judgment. Exhibit D

26. Defendants worked in concert to obtain liens against Plaintiff M. Martinez's property.

27. Defendant M. Martinez filed a complaint against the McGavic Defendants with the Department of Justice in an effort to resolve this matter.

28. Defendant Kristan K. Finney made false statements to Becky Papke with the Civil

Enforcement Division of the Department of Justice regarding Plaintiff M. Martinez.

29. The Lane County Circuit Court has vacated the default judgment entered against plaintiff M. Martinez based on defendant Mc Gavic's false affidavit.

30. The Defendants have failed to return Plaintiff Ott and Plaintiff M. Martinez's money they received through the garnishment process.

31. As a direct and proximate result of Defendants' actions each Plaintiff has suffered actual damages in the form of emotional distress, anger, anxiety, worry, frustration, among other negative emotions.

TRIAL BY JURY

32. Plaintiffs are entitled to and hereby respectfully demand a trial by jury. US Const. amend. 7. Fed. R. Civ. Pro. 38.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 *et seq.*

(LVNV and MCGAVIC DEFENDANTS)

33. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

34. The foregoing acts and omissions of Defendants constitute numerous and multiple violations of the FDCPA including, but not limited to, 15 U.S.C. § 1692d, 1692e, 1692e(2)A, 1692e(5), 1692e(10), 1692f.

35. As a result of Defendants' violations of the FDCPA, Plaintiffs are each entitled to

actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3).

COUNT II.

ABUSE OF PROCESS

(ALL DEFENDANTS)

36. Plaintiffs incorporate by reference all of the paragraphs of this Complaint as though fully stated herein.

37. Defendants actions constitute abuse of process.

38. As a result of such action each Plaintiff is entitled to actual damages and punitive damages in an amount to be determined at trial.

ABUSE OF A VULNERABLE PERSON

(All Defendants)

39. Plaintiffs incorporate by reference each paragraph of this complaint.

40. At all times material Plaintiff Ruth Martinez is 65 years of age and is disabled.

41. At all times material Plaintiff Edward Bernabe is a person with disabilities as that term is defined by ORS 124.100.

42. Defendants' actions in collecting against Edward Bernabe and Ruth Martinez and their assets is abuse of a vulnerable person as defined by ORS 124.110.

CONVERSION

(All Defendants)

43. Plaintiffs incorporate by reference each paragraph of this complaint.

44. Defendants acted in concert to obtain a judgment by fraud and to levy on plaintiffs' assets using a void judgment.

45. The collection and retention of plaintiffs' assets is conversion.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against Defendants for:

for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1), 42 U.S.C. 1988 and plaintiffs' state law claims against each and every Defendant;

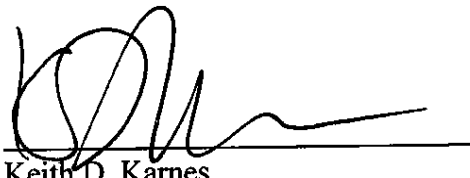
for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against each and every Defendant;

for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) and ORS 124.100 against each and every Defendant;

for treble damages in favor of Edward Bernabe and Ruth Martinez against each Defendant pursuant to ORS 124.100;

for punitive damages against each Defendant.

DATED: October 8, 2009.

A handwritten signature in black ink, appearing to read 'Keith D. Karnes', is written over a horizontal line.

Keith D. Karnes
OSB # 03352
503-362-9393
Attorney for Plaintiff

FILED
AT... 20' CLOCK... M

AUG 05 2008

Circuit Court for Lane County Oregon

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

LVNV FUNDING, LLC.,

Plaintiff,

v.

MONICA A. MARTINEZ,

Defendant(s).

Case No. 120810363

AFFIDAVIT OF COUNSEL IN SUPPORT
OF MOTION FOR COURT ORDER FOR
SERVICE BY OTHER METHOD

STATE OF OREGON)
County of Lane) ss.

I, the undersigned attorney, being first duly sworn, on oath, depose and say as follows:

1. I am one of the attorneys for the Plaintiff in this case, and make this affidavit in support of the Plaintiff's Motion for Court Order for Service upon Defendant(s) MONICA A. MARTINEZ by Other (Alternative) Method.

2. As Attorneys for Plaintiff, I can report the service has been attempted upon the Defendant(s) MONICA A. MARTINEZ in this case by personal or substituted service numerous times, all without success.

3. The process servers this office used has reported back the Defendant(s) MONICA A. MARTINEZ is/are avoiding service and that the server is unable to serve without an Order authorizing service by posting the premises as described in ORCP &D(6)(a).

4. Both the process server and the office of the undersigned have done a thorough skip tracing and are independently convinced the address listed is the actual abode of the party sought to be served with court documents.

DERICK E. Mc GAVIC
ATTORNEY AT LAW
OSM # 63264
P.O. BOX 10163
EUREKA, OR 97440
(541) 484-4535
Fax (541) 342-4709
dcmcgavic@mcgavick.com

PAGE 1 - AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR COURT ORDER FOR SERVICE BY OTHER METHOD

EXHIBIT

PAGE 1 OF 3

DEM/tca/Augus. 4, 2008/71N:08-03233-0 (Rev. 01/08/09)

- 1 5. After careful review the undersigned is of the opinion that service by posting is
 2 appropriate and is the most likely method of service to give actual notice to
 3 Defendant(s) MONICA A. MARTINEZ.
- 4 6. The Plaintiff has made diligent efforts to locate and serve the Defendant(s) MONICA
 5 A. MARTINEZ with court documents which need to be served at 24382 High Pass Rd
 6 Junction City, Oregon 97448-9386.
- 7 7. The Assessor's office confirmed that the Defendant owns the property at 24382 High
 8 Pass Road, Junction City, Oregon 97448-9386. The Oregon Department of Motor
 9 Vehicles shows that the Defendant is registered at 24382 High Pass Road, Junction
 10 City, Oregon 97448-9386.
- 11 8. Based upon all the information available to me, I believe Defendant(s) MONICA A.
 12 MARTINEZ has and will attempt to avoid or delay service of the current court
 13 document requiring service as well as all future court documents which may need to be
 14 served in the future.
- 15 9. Finally, I represent that:
- 16 a. I plan to use the posting order sought here until the Defendant(s) provide my
 17 office with a suitable traditional method of service; and
- 18 b. If and when the Defendant provides this office with adequate assurance of a
 19 method of service for the standard and traditional type of service appropriate for
 20 the document to be served, I will instruct the process server to use that method
 21 and will discontinue service by posting under the Order sought here until
 22 traditional methods of service return the server to the similar circumstances
 23 which caused the undersigned to seek a service by posting order in the first
 24 place.

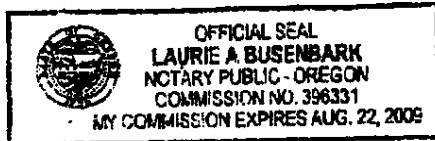
25 Plaintiff respectfully requests that service upon Defendant(s) MONICA A. MARTINEZ
 26 be ordered pursuant to ORCP 7 D(6)(a) by posting the Summons and Complaint in 3

conspicuous places at 24382 High Pass Rd Junction City, Oregon 97448-9386 followed by the mailing a copy of the Summons and Complaint to Defendant(s) by First Class Mail to that address. Plaintiff additionally requests that the time required for response by the Defendant(s) MONICA A. MARTINEZ to avoid a Default Judgment be set for thirty (30) days after the date of said mailing. Plaintiff finally requests that Plaintiff be authorized to serve any and all future documents in this case which may hereafter be filed in Court by Plaintiff and which requires service upon Defendant(s) be ordered served in like manner.

[Signature]

- ☒ Derrick E. Mc Gavic, OSB # 63054
☐ Eric J. Kiley, OSB # 02580
☐ Kristan K. Finney, OSB # 06152
☐ Sarah E. Fudge, OSB # 06330
 Of Attorneys for Plaintiff

SIGNED AND SWORN TO before me on August 4, 2008 by
☒ Derrick E. Mc Gavic; ☐ Eric J. Kiley; ☐ Kristan K. Finney; ☐ Sarah E. Fudge.



[Signature]
 NOTARY PUBLIC FOR OREGON

UTCR 2.010 Document Information

Trial Attorney Not Yet Assigned

FIVE
AT...
AUG 05 2009

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

LVNV FUNDING, LLC.,
Plaintiff,

Case No. 120810363

**AFFIDAVIT OF
COUNSEL**

v.

MONICA A. MARTINEZ,
Defendant(s).

STATE OF OREGON,)
County of Lane.) ss.

I, the undersigned, being first duly sworn on oath, do depose and say:

1. I am one of the attorneys for the Plaintiff herein.
2. We have been attempting to serve the Defendant(s), MONICA A. MARTINEZ with Summons and Plaintiff's Complaint since May 07, 2008.
3. Attempts to serve MONICA A. MARTINEZ were made by both regular mail and certified mail, restricted delivery with return receipt as well as in person by a process server at:
 - a. MONICA A. MARTINEZ's last known address at 24382 High Pass Road, Junction City, Oregon 97448-9386.
4. The Oregon Department of Motor Vehicles indicates that the Defendant is registered at 24382 High Pass Road, Junction City, Oregon 97448-9386.
5. The Assessor's office confirmed that the Defendant owns the property at 24382 High Pass Road, Junction City, Oregon 97448-9386.

Page 1 - AFFIDAVIT OF COUNSEL

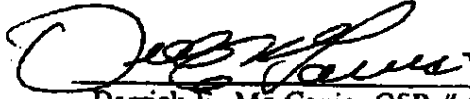
DERUCK E. MC CLAVE
ATTORNEY AT LAW
OSR # 63254
P.O. Box 70163
Eugene, OR 97448
(541) 485-4555
Fax (541) 542-5309
emcclav@mcclavlaw.com

DEM/rca/August 4, 2009/P45 - /08-03239-0/(Rev. 01/11/06)

EXHIBIT

PAGE 1 OF 2

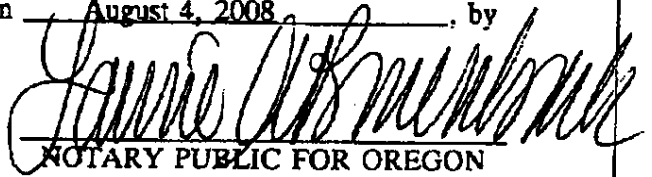
- 1 6. I am submitting a Motion for Alternate Service by Other Methods to the court.
2 7. I request the case be continued for sixty (60) days within which to achieve service upon
3 the Defendant(s).



Derrick E. Mc Gavic, OSB # 63054
Of Attorneys for Plaintiff

7 SIGNED AND SWORN TO before me on August 4, 2008, by
8 Derrick E. Mc Gavic.




NOTARY PUBLIC FOR OREGON

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Page 2 - AFFIDAVIT OF COUNSEL

DERICK E. MC GAVIC
ATTORNEY AT LAW
OSB # 63054
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(541) 485-4555
FAX (541) 342-5303
dmcgavic@mcgavic.com

DEM/ra/August 4, 2008/P45 - A06-03239-C/(Rev. 01/11/06)

EXHIBIT B

PAGE 2 OF 2

DATE PRODUCED
02/25/09DRIVER AND MOTOR VEHICLE SERVICES
89718

PAGE 1

LIC NO. [REDACTED] NAME: MARTINEZ, MONICA ANN DOB [REDACTED]
ADD: 24468 HIGH PASS RD RESTRICT
JUNCTION CITY OR 974480000
EXPIRES 11/03/09 LIC TYPE - C 8 YEAR 1ST LIC 01/29/01
ENDORSE - CDL - NO POLICY -

** DRIVING RECORD ENTRIES AND STATUS AS OF 02/25/09**

ISS 01/29/01 INT EXP: 00/00/00 MAILED: 00/00/00
DUP 04/10/08 STICKER

I, THE UNDERSIGNED, BEING DULY APPOINTED AND HAVING WITHIN MY CUSTODY THE RECORDS OF DRIVER AND MOTOR VEHICLE SERVICES, DEPARTMENT OF TRANSPORTATION, STATE OF OREGON, HEREBY CERTIFY THAT THE FOREGOING DRIVING RECORD COPY IS A CORRECT TRANSCRIPT OF THE SPECIFIED DATA CONTAINED WITHIN THE DATA PROCESSING DEVICE OR COMPUTER.

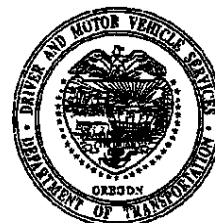
SIGNED UNDER THE SEAL OF THE DEPARTMENT THIS 25TH DAY OF FEBRUARY, 2009

MANAGER, CUSTOMER SERVICES

MAIL TO:

BY

OLSEN, OLSEN & DAINES
ATTN: KIMBERLY CONDON
PO BOX 12829
SALEM OR 97309

EXHIBIT CPAGE 1 OF 1*Diane L. Beever*

AFFIDAVIT OF SERVICE

State of Oregon

County of Lane

Lane County Circuit Court

Case Number: 12-08-10363

Plaintiff:

LVNV FUNDING, LLC.,

vs.

Defendant:

MONICA A. MARTINEZ

FILED
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JULIAN
FOR
2Y

Received by Valley Process Services, LLC. to be served on Monica A. Martinez, 24382 High Pass Rd., Junction City, OR 97448.

I, Jason Williams, being duly sworn, depose and say that on the 23rd day of August, 2008 at 9:42 am, I:

POSTED by attaching a true copy of the Amended Summons and Complaint, Motion and Order and Affidavit in Support for Service by Alternative Methods with the date and hour of service endorsed thereon by me, to a conspicuous place on the property of the within named person's RESIDENCE at the address of: 24382 High Pass Rd., Junction City, OR 97448.

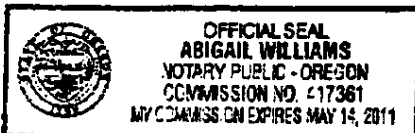
I HEREBY CERTIFY that I completed substitute service, as required by law, by mailing a true copy of the foregoing document(s) along with a notice of the date, time and place where service was made to: Monica A. Martinez at 24382 High Pass Rd., Junction City, OR 97448 on 8/25/2008. Signed Jason Williams

ALL SEARCH AND SERVICE WAS MADE WITHIN THE COUNTY OF LANE

I am a competent person over the age of 18, a resident of said state, not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise and knew that the person, firm, or corporation served is the identical one named in the action.

Subscribed and Sworn to before me on the 25th day of August, 2008 by the affiant who is personally known to me.

Abigail Williams
NOTARY PUBLIC



Jason Williams
Jason Williams
Process Server

Valley Process Services, LLC.
P.O. Box 11822
Eugene, OR 97440
(541) 683-3301

Our Job Serial Number: 2008003369
Ref: 803239